



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154377

PRELIMINARY RECITALS

Pursuant to a petition filed December 26, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General in regard to FoodShare benefits (FS), a hearing was held on January 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner may contest closure of his FoodShare case due to imposition of an intentional program violation sanction.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nadine E. Stankey OIG and Yia Xiong, MILES

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In October 2013, the Department issued an *Administrative Disqualification Hearing Notice* to Petitioner, advising that a FoodShare intentional program violation hearing was scheduled for him on November 7, 2013. The November 7 hearing was conducted by Administrative Law Judge Duren of this office, and Petitioner did not appear.
3. In November 2013, Judge Duren issued a decision that sustained the Department's position that above Petitioner had engaged in FoodShare trafficking, and that he should be disqualified from the FoodShare program for one year. Decision No. FOF/152035 (Wis. Div. of Hearings &

Appeals November 18, 2013). Petitioner did not contact that judge within 30 days of November 18 to argue that he had not received his hearing notice.

4. On November 20, 2013, the Department issued a disqualification onset notice to Petitioner, advising him of his one-year FoodShare disqualification. The notice incorrectly advised Petitioner that he could request a fair hearing with this office within 90 days to contest the disqualification.
5. Petitioner filed a hearing request on December 26, 2013.

DISCUSSION

The Department is required to make an Intentional Program Violation (IPV) determination for a recipient's behavior if it includes:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

See, FoodShare Wisconsin Handbook (FSWH), § 7.3.2.4.

If the Department believes that an IPV has been committed, it schedules an IPV hearing before a state Administrative Law Judge. That was done here. Following that hearing, the Administrative Law Judge issues a decision that either sustains or reverses the recommended IPV sanction. In this case, the Judge sustained the sanction, which allows the sanction to go forward.

Following the Judge's decision, the Department issued a notice to Petitioner advising him of the sanction imposition. The notice incorrectly advised him that he had a right to request another hearing to challenge the sanction imposition. The pertinent federal rule says there is no further right to an administrative hearing regarding the sanction:

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. ...

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. ...

7 C.F.R. § 273.16(e)(8)(i)-(ii).

Thus, Petitioner has no right to a hearing to contest the one-year IPV sanction. He had the option of appealing to circuit court. This appeal must therefore be dismissed.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals has no jurisdiction to consider the correctness of the imposition of a FoodShare IPV sanction where an administrative hearing decision has been issued and the respondent (i.e., Petitioner in this case) did not timely proffer a good cause reason for nonappearance.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of February, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 19, 2014.

Office of the Inspector General
Division of Health Care Access and Accountability